IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1521 OF 2006

Ramesh Bhaguram Tambe ... Petitioner

V/s

The State of Maharashtra & ors. ... Respondents

Shri Prasad B. Kulkarni i/by P.M. Gaikwad for the petitioner.

Smt. S.D. Shinde, A.P.P. for the respondents.

CORAM: J. N. PATEL AND
SMT. ROSHAN DALVI, JJ.

DATED: 25TH AUGUST, 2006

P.C.:

1. Rule. Rule made returnable forthwith.

2. Heard learned counsel for the parties.

3. The petitioner has been acquitted for having committed the offence under Sec. 302 of the I.P.C. and was convicted under Sec. 304 Part II of the I.P.C. and sentenced to suffer regorous imprisonment for and seven years by the Addl. Session Judge, Greater Bombay.

4. The petitioner was arrested on 23.4.2003 and as he was eligible for furlough, he applied to the respondent competent authority to grant him permission which came to be rejected by the impugned order on the ground of adverse police report. The learned counsel for the petitioner submits that the petitioner has been denied his right to furlough without any justification on the basis of usual police report, otherwise the petitioner has no criminal antecedent and there is no misconduct on his part while undergoing his sentence.

5. The learned A.P.P. submits that the competent authority has rightly relied upon the adverse report received from the Commissioner of Police, Head Quarters (Prevention of Crime), Mumbai. The police report says that if the petitioner is released on furlough, there is possibility of threat to the witnesses. We fail to understand as to why the D.I.G. (Prison) accepts such report without objectively examining the case as it relates to grant of furlough to the personer which is otherwise available to him as of right and has a social purpose.

6. The competent authority has not quoted the rule under which his application came to be rejected. There

is no report to the effect that if the petitioner prisoner is released on furlough there is likelihood of breach of peace and tranquility. Therefore, the impugned order is quashed and set aside. We direct the competent authority to reconsider the application of the prisoner for releasing him on furlough ignoring the police report. The decision be taken in the matter within seven days from the date of passing of this order.

7. Rule is made absolute in the aforesaid terms with cost which we quantify at Rs.1000/-. The cost be credited in the account of the prisoner in jail.

(J. N. Patel, J.)

(SMT. ROSHAN DALVI, J.)